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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DENNIS M. LORENZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

SAFEWAY, INC.; SAFEWAY
BENEFIT PLANS COMMITTEE;
GREAT-WEST FINANCIAL RPS
LLC; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

- 1. ERISA Breach of Fiduciary Duty**
- 2. ERISA Prohibited Transactions**

I. INTRODUCTION

1. Plaintiff Dennis M. Lorenz (“Plaintiff”), on behalf of himself and all others similarly situated, brings this putative class action against Defendants Safeway, Inc., Safeway Benefit Plans Committee (collectively “the Safeway Defendants”), Great-West Financial RPS LLC (dba Empower) (“Great-West”), and Does 1 through 50 under Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and 1132 (a)(3). This action is brought on behalf of the Safeway 401(k) Plan (“Plan”) and certain participants and beneficiaries of the Plan.

2. Plaintiff sues Defendants for breaching their fiduciary duties and/or engaging in transactions prohibited by ERISA in connection with “target date funds” managed by non-defendant JP Morgan Asset Management (“JPM”) and offered as investment options in the Plan.

3. The Safeway Defendants breached their fiduciary duties to Plaintiff, the putative class, and the Plan by selecting JPM target date funds as investment options for the Plan that charged excessive fees as compared to readily-available alternatives.

4. Furthermore, in connection with selecting the JPM target date funds as investment options for the Plan, the Safeway Defendants also agreed to a “revenue sharing” arrangement whereby a large portion of the fees charged by the JPM target date funds and paid by Plaintiff and the putative class was kicked back to Defendant Great-West (and previously, its predecessor in interest, J.P. Morgan Retirement Plan Services, or “JPMRPS”), purportedly to compensate Great-West / JPMRPS for record-keeping services. In fact, the amount of such fees was far in excess of the reasonable value of such services and thus the Safeway Defendants and Great-West / JPMRPS engaged in transactions prohibited by ERISA.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiff's claims under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and 28 U.S.C. § 1331 because this action arises under the laws of the United States.

6. Venue is proper in the Northern District of California under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this District, the Safeway Defendants reside within this District, Great-West may be found in this District, and/or the alleged breaches of the duties imposed by ERISA took place in this District.

III. PARTIES

7. Plaintiff is and was during the relevant times a participant in the Plan and invested his retirement savings in the JPMCB Smartretire Passiveblend 2020 Fund, one of the JPM target date funds that are the subject of this Complaint.

8. The Plan is an employee pension benefit plan within the meaning of ERISA § 3(2)(a), 29 U.S.C. § 1002(2)(a), and an individual account plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34).

9. Defendant Safeway, Inc. is the sponsor of the Plan and, as such, is a fiduciary of the Plan with respect to the conduct and transactions from which its liability arises, specifically designing a menu of investment options for participants in the Plan and negotiating contracts relating to such options.

10. Defendant Safeway Benefit Plans Committee is the administrator of the Plan and, as such, is a fiduciary of the Plan with respect to the conduct and transactions from which its liability arises, specifically designing a menu of investment options for participants in the Plan and negotiating contracts relating to such options.

11. Defendant Great-West is the recordkeeper for the Plan and, as such, is a service provider and "party in interest" under ERISA with respect to the conduct and transactions from which its liability arises, as described below.

1 12. Previously, the recordkeeper for the Plan was JPMRPS, an affiliate of
2 JPM. JPMRPS was likewise a party in interest under ERISA while serving as
3 recordkeeper. In September 2014, Great-West and/or an affiliate acquired the
4 record-keeping business of JPMRPS. The combined entity does business under the
5 name Empower and is one of the largest service providers in the U.S. defined
6 contribution market, with nearly 7 million participants as of the closing of the
7 acquisition.

8 13. Does 1-50 are entities and individuals who are additional fiduciaries of
9 the Plan and/or parties in interest with respect to the Plan in connection with the
10 conduct and transactions alleged in this Complaint.

11 **IV. THE JPM TARGET DATE FUNDS**

12 14. Target date funds are investment funds designed to allow retirement
13 plan participants to invest in a single fund with a professionally-managed, broadly-
14 diversified portfolio that becomes more conservative as the participant approaches
15 retirement age, typically by shifting the proportion of the fund investing in stocks as
16 compared to bonds. Typically, a retirement plan offers a variety of target date funds
17 referencing dates at five-year intervals (e.g. a 2020 fund, a 2025 fund, etc.) and a
18 participant who chooses to invest in such funds is invested in a single fund with a
19 target date that corresponds to that participant's anticipated retirement age.

20 15. Prior to 2011, the Plan offered as investment options target date funds
21 managed by Blackrock Institutional Trust Company called the Lifepath Index
22 Funds.

23 16. Starting in 2011 and continuing to the present, the Plan has offered as
24 investment options target date funds managed by JPM. These funds are: JPMCB
25 Smartretire Passiveblend 2015, JPMCB Smartretire Passiveblend 2020, JPMCB
26 Smartretire Passiveblend 2025, JPMCB Smartretire Passiveblend 2030, JPMCB
27 Smartretire Passiveblend 2035, JPMCB Smartretire Passiveblend 2040, JPMCB
28 Smartretire Passiveblend 2045, JPMCB Smartretire Passiveblend 2050, and JPMCB

Smartretire Passiveblend Income (collectively the “JPM Smartretire Passiveblend Funds”).

17. At the time the Safeway Defendants selected the JPM Smartretire Passiveblend Funds, JPMRPS served as the recordkeeper for the Plan and non-defendant JPMorgan Chase Bank, N.A. (“Chase”) was the trustee of the Plan. JPMRPS and Chase were, at the time, affiliates of JPM. In September 2014, Great-West and/or an affiliate acquired the record-keeping business of JPMRPS and became the recordkeeper for the Plan.

18. At the time the Safeway Defendants selected the JPM Smartretire Passiveblend Funds, these funds had just been introduced into the retirement investment products market and had no track record of results.

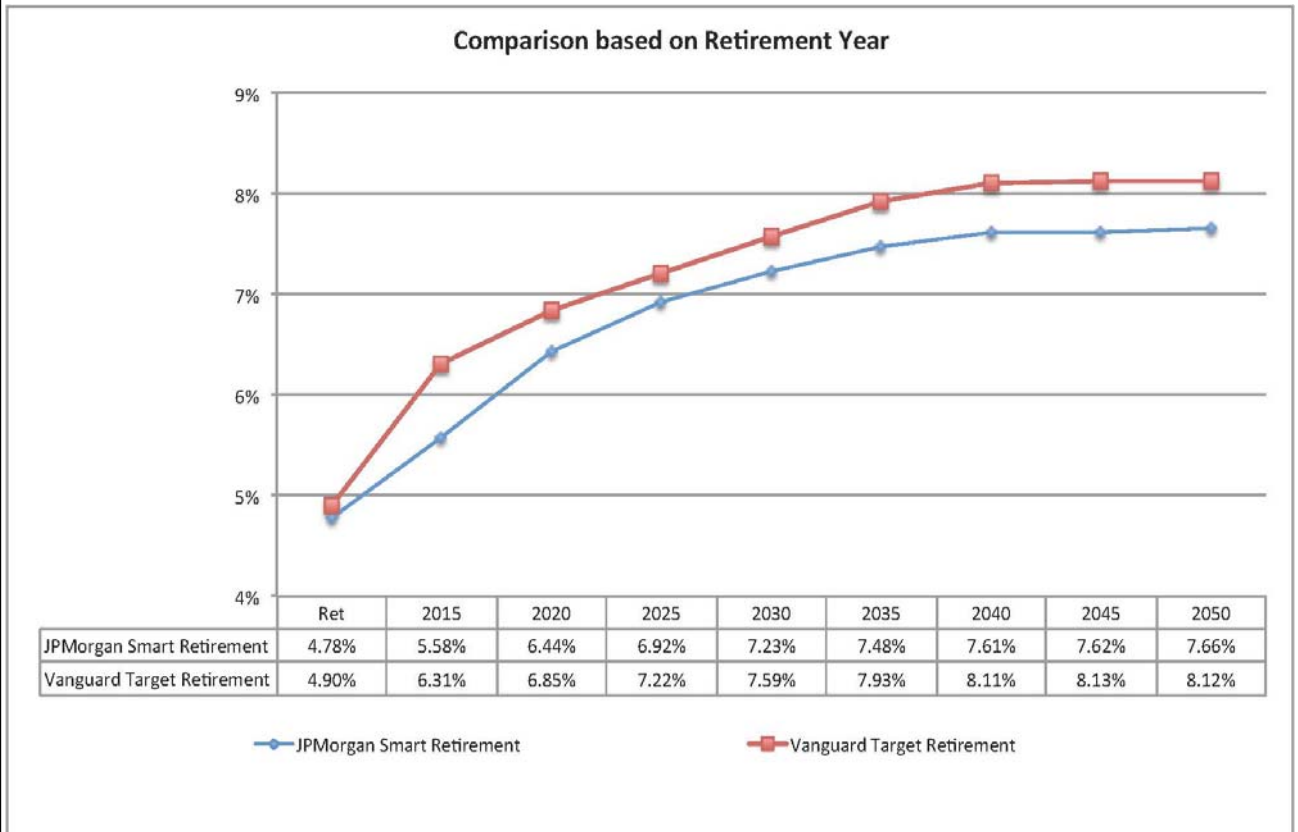
V. THE EXCESSIVE FEES OF THE JPM SMARTRETIRE PASSIVEBLEND FUNDS

19. During the relevant times, the JPM Smartretire Passiveblend Funds charged participants in the Plan who invested in such funds between 47 and 50 basis points (0.47% - .50%) of the amount invested as a management fee.

20. By comparison, the Blackrock Lifepath Index funds which were replaced by the JPM Smartretire Passiveblend Funds charged only a 13 basis point fee.

21. Alternatives to the JPM Smartretire Passiveblend Funds that were readily available as of 2011 also charged substantially lower fees. Target date funds offered by Vanguard, for example, charge about a 15 basis point fee. The Vanguard target date funds are a popular investment option in 401(k) plans, with a market share of approximately 27 percent as of 2015, which made it the largest provider of target date funds.

22. Net of management fees, the Vanguard target date funds substantially outperformed the comparable JPM Smartretire Passiveblend Funds, as shown in the table below (average of five-year return per fund for the period ending in 2015):



VI. REVENUE SHARING TO JPMRPS / GREAT-WEST

23. The management fee charged to participants for investing in the JPM Smartretire Passiveblend Funds included a 20 basis point revenue sharing payment to JPMRPS and later Great-West. This revenue sharing payment was purportedly compensation to JPMRPS / Great-West for record-keeping services in connection with the Plan but, as set forth below, resulted in compensation to JPMRPS / Great-West far in excess of reasonable compensation for such services.

24. The excessiveness of these revenue sharing payments is illustrated by the fact that the amount invested in the JPM Smartretire Passiveblend Funds (and thus the revenue sharing payments made to JPMRPS / Great-West) more than doubled between 2011 and 2014. At the same time, the number of participants in the Plan (and other related 401(k) plans that offered the JPM Smartretire Passiveblend Funds) actually decreased.

25. The Plan offered the JPM Smartretire Passiveblend Funds through a collective trust, the Safeway Inc. Defined Contribution Plans Master Trust, in which the Plan and two other plans (the Vons Companies, Inc. Pharmacists 401(k) Plan and the Dominicks Finer Foods, LLC 401(k) Retirement Plan for Union Employees) held their investments.

26. As shown below, the total amounts invested in the JPM Smartretire Passiveblend Funds through the Safeway Inc. Defined Contribution Plans Master Trust increased greatly from 2011 through 2014:

	2011	2012	2013	2014
2015	18,054,681	19,794,989	21,701,311	24,350,028
2020	23,131,987	28,861,951	35,339,858	43,053,629
2025	19,324,173	24,110,732	32,225,022	41,359,913
2030	14,643,308	19,831,420	26,310,034	33,855,085
2035	13,165,543	17,414,630	24,262,579	30,486,593
2040	10,246,266	13,044,064	18,094,659	22,064,219
2045	13,897,710	18,275,268	25,349,788	29,000,104
2050	303,294	1,673,355	4,971,998	8,948,585
Income	7,177,639	8,123,322	9,648,738	11,682,471
<u>Total</u>	<u>119,944,601</u>	<u>151,129,731</u>	<u>197,903,987</u>	<u>244,800,627</u>

27. During this same time period, the number of participants with account balances in the three 401(k) plans invested through the Safeway Inc. Defined Contribution Plans Master Trust steadily declined, with a total of 41,363 participants with account balances in 2011, 40,533 in 2012, 40,059 in 2013, and 38,126 in 2014.

28. In other words, JPMRPS / Great-West received greater and greater revenue for providing the same services (in fact, more than double the revenue in 2014 than in 2011) to a smaller number of participants.

29. And the revenue sharing payments generated from the JPM Smartretire Passiveblend Funds were far from the sole source of JPMRPS / Great-West's compensation for record-keeping services. These companies also received revenue

1 sharing payment from other investments offered through the Plan and direct
2 payments from the Plan for record-keeping services.

3 30. The Safeway Defendants could have obtained record-keeping services
4 at a much lower rate, had they: (1) negotiated a per-participant payment for record
5 keeping rather than an asset-based charge (*i.e.* payment based on a percentage of
6 monies invested); or (2) negotiated a lower asset-based charge when it became clear
7 that the amounts invested in the JPM Smartretire Passiveblend Funds were growing
8 so quickly so as to generate a windfall for JPMRPS / Great-West.

9 **VII. THE SAFEWAY DEFENDANTS' BREACHES OF FIDUCIARY DUTY**

10 31. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that plan
11 fiduciaries, such as the Safeway Defendants, discharge their duties solely in the
12 interests of plan participants and beneficiaries and with the care, skill, prudence, and
13 diligence under the circumstances that a prudent person acting in a like capacity and
14 familiar with such matters would use in the conduct of a similar enterprise.

15 32. In the context of selecting investment options for plan participants, the
16 duty of prudence requires that plan fiduciaries investigate the relative performance
17 and fees of available investment options and, based on a thorough investigation,
18 make an informed and reasonable choice of which of those investment options to
19 make available to plan participants.

20 33. The Safeway Defendants breached the duty of prudence in connection
21 with selecting the JPM Smartretire Passiveblend Funds because, among other things,
22 these funds charged higher fees than comparable, readily-available funds, had no
23 meaningful record of performance so as to indicate that higher performance would
24 offset this difference in fees, and was managed by a company affiliated with the
25 Plan's recordkeeper, JPMRPS, and trustee, Chase.

26 34. Had the Safeway Defendants conducted an adequate investigation of
27 available alternatives, without the influence of JPMRPS and Chase, they would have
28

1 selected target date funds with an established record of performance and lower fees,
2 such as the Vanguard target date funds.

3 35. Had they done so, Plaintiff and the members of the putative class would
4 have achieved higher investment returns because they would have paid lower fees.

5 36. In this context, the duty of prudence also requires that plan fiduciaries
6 like the Safeway Defendants investigate whether revenue sharing is a reasonable
7 and cost-effective way to pay for administrative services incurred in connection with
8 a plan, such as record-keeping services.

9 37. Specifically, the Employee Benefits Security Administration of the
10 U.S. Department of Labor Plan has opined that, in the context of a revenue sharing
11 arrangement, “the responsible plan fiduciaries must assure that the compensation the
12 plan pays directly or indirectly to [the service provider] for services is reasonable,
13 taking into account the services provided to the plan as well as all fees or
14 compensation received by [the service provider] in connection with the investment
15 of plan assets, including revenue sharing.” Advisory Opinion 2013-03A (July 3,
16 2013).

17 38. This same opinion makes it clear that the duty of plan fiduciaries to
18 assure the reasonableness of compensation received by a service provider is a
19 continuing one. “Under section 404(a)(1) of ERISA, the responsible plan fiduciaries
20 must act prudently and solely in the interest of the plan participants and
21 beneficiaries both in deciding whether to enter into, or *continue*, [the revenue
22 sharing arrangement].” *Id.*(emphasis added).

23 39. The Safeway Defendants breached the duty of prudence in connection
24 with agreeing to the revenue sharing arrangement for the JPM Smartretire
25 Passiveblend Funds because a reasonable investigation would have found that a per-
26 participant fee for record keeping services as opposed to an asset-based revenue
27 sharing arrangement would have resulted in lower fees.

40. This breach of prudence is further evidenced by the fact that the Safeway Defendants agreed to revenue sharing payments for other investment options offered by the Plan, but the percentage amount of such payments for the JPM Smartretire Passiveblend Funds was substantially higher than most of these other options. In 2011, for example, JPMRPS received a five basis point revenue sharing payment from the American Funds Europacific Growth-R fund, a ten basis point revenue sharing payment from the Dodge & Cox Stock fund and the RS Partners-Y fund, and a fifteen basis point revenue sharing payment from the Forward Growth-Institutional Fund. Only two of the funds offered by the Plan (the Pimco Total Return and Chesapeake Core Growth fund) involved a higher revenue sharing payment than the JPM Smartretire Passiveblend Funds.

41. This breach of duty became even more pronounced as the amounts invested in the JPM Smartretire Passiveblend Funds, and thus the revenue paid out to JPMRPS / Great-West, more than doubled between 2011 and 2014, while the total number of active participants (*i.e.* those with account balances) in the plans investing in these funds decreased. Thus, JPMRPS / Great-West received more and more money for performing the same services for a smaller number of participants, assuring a windfall to JPMRPS / Great-West at the expense of participants in the Plan.

42. The Safeway Defendants took no action to reduce the percentage paid under the revenue sharing arrangement to account for the ever-increasing amounts held in the JPM Smartretire Passiveblend Funds.

43. Had the Safeway Defendants complied with their fiduciary duties with respect to the revenue sharing, Plaintiff and the members of the putative class would have achieved higher investment returns because they would have paid lower fees.

VIII. DEFENDANTS' PROHIBITED TRANSACTIONS

44. JPMRPS / Great-West was and is a “party in interest” with respect to the Plan pursuant to ERISA § 3(14)(B), 29 U.S.C. § 3(14)(B), as a “person

1 providing services to such plan.” Specifically, JPMRPS / Great-West provided
2 record-keeping services for the Plan.

3 45. ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), prohibits a plan
4 fiduciary from causing the plan to engage in a transaction that constitutes any
5 furnishing of goods, services, or facilities between the plan and a party in interest to
6 that plan.

7 46. The revenue sharing arrangement set forth above constitutes a
8 transaction prohibited by this section, as it involves among other things the
9 exchange of services by JPMRPS / Great-West to the Plan.

10 47. ERISA § 408(b)(2), 29 U.S.C. § 1008(b)(2), provides for certain
11 exemptions to the prohibition on the specified transactions. Any applicable
12 exemption, however, requires that the compensation received by the party in interest
13 be reasonable.

14 48. The revenue sharing arrangement described above does not qualify for
15 any exemption under ERISA § 408(b)(2), 29 U.S.C. § 1008(b)(2), because JPMRPS
16 / Great-West received more than reasonable compensation for the record-keeping
17 services they provided. This is evidenced by, among other things, the facts that such
18 record-keeping services could have been provided at a lower cost if they were
19 calculated on a per-participant basis as opposed to on an asset-based basis and that
20 the amounts invested in the JPM Smartretire Passiveblend Funds, and thus the
21 revenues sharing payments for those funds, more than doubled while the number of
22 participants with account balances in the Plan and related plans decreased.

23 **IX. CLASS ALLEGATIONS**

24 49. Plaintiff brings this action as a class action under Rules 23(a) and
25 23(b)(1) or, in the alternative, 23(b)(3) of the Federal Rules of Civil Procedure on
26 behalf of a class of similarly-situated person (“the Class”):
27
28

1 All participants in the Plan who invested in any of the JPM Smartretire
2 Passiveblend Funds from the time these funds were first offered by the Plan in
3 2011 until the time of trial (the “Class Period”).

4 50. The members of the Class are so numerous that joinder of all members
5 is impracticable. As of the year ending 2011, the Plan had 38,199 participants with
6 account balances. A large number of these participants were invested in one of the
7 JPM Smartretire Passiveblend Funds.

8 51. Common questions of law and fact exist as to all members of the Class
9 and predominate over questions solely affecting individual members of the Class.
10 Among such questions are:

11 (a) Whether the Safeway Defendants breached their fiduciary duties with
12 respect to the decision to initially offer, and continue to offer, the JPM
13 Smartretire Passiveblend Funds;

14 (b) Whether the Safeway Defendants breached their fiduciary duties with
15 respect to agreeing to the revenue sharing arrangement with JPMRPS / Great-
16 West with respect to the JPM Smartretire Passiveblend Funds and for
17 continuing that arrangement;

18 (c) Whether Defendants engaged in a transaction prohibited by ERISA by
19 causing the Plan to enter a transaction by which a party in interest to the Plan
20 received compensation for providing services to the Plan;

21 (d) Whether any exemption to ERISA’s prohibition on certain transactions
22 apply, and specifically whether the compensation received by JPMRPS /
23 Great-West for record-keeping services was reasonable; and

24 (e) The remedies to which the Class and Plan are entitled as a result of
25 Defendants’ breaches of fiduciary duty and engaging in transactions
26 prohibited by ERISA.

27 52. There are no substantial individual questions among the Class members
28 as to the merits of this action.

1 53. Plaintiff's claims are typical of the claims of the members of the Class,
2 as Plaintiff and all members of the Class were harmed by Defendants' common
3 course of wrongful conduct with respect to the entire slate of JPM Smartretire
4 Passiveblend Funds offered to participants in the Plan.

5 54. Plaintiff has been injured by the breaches of fiduciary duty and
6 prohibited transactions alleged above and is committed to fairly, adequately, and
7 vigorously representing and protecting the interests of the members of the Class.

8 55. Plaintiff has retained counsel competent and experienced in ERISA
9 class actions.

10 56. Neither Plaintiff nor his counsel have any interests that conflict with
11 those of the Class and Plaintiff is otherwise an adequate representative of the Class.

12 57. Class certification is appropriate pursuant to Fed. R. Civ. Proc. 23(b)(1)
13 because the prosecution of separate actions by individual members of the Class
14 would create a risk of inconsistent or varying adjudications which would establish
15 incompatible standards of conduct for Defendants, and/or because adjudications
16 regarding individual members of the Class would as a practical matter be dispositive
17 of the interests of non-party members of the Class.

18 58. In the alternative, class certification is appropriate under Fed. R. Civ.
19 Proc. 23(b)(3) because common issues of law and fact predominate over questions
20 affecting only individual members of the Class. The only individualized issues will
21 be the amount of damage each member of the Class incurred from the misconduct
22 alleged above and such damages can be readily calculated based on business records
23 maintained by Defendants and/or the Plan.

24 59. A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy. Defendants injured Plaintiff and the
26 members of the Class by causing them to pay excessive and improper fees, thus
27 diminishing their investment returns. This diminution of returns is, on an individual
28 level, small and difficult to detect but in the aggregate is substantial. Individual

1 participants who have invested in the JPM Smartretire Passiveblend Funds have an
2 insufficient stake in the outcome of this matter to devote substantial resources to
3 pursue it.

4 60. The names and address of members of the Class are available from
5 Defendants and/or the Plan. The identity of class members is readily ascertainable
6 and adequate notice can easily be provided to members of the Class if required.

7 **X. CLAIMS FOR RELIEF**

8 **COUNT ONE – THE SAFEWAY DEFENDANTS’ BREACHES OF**
9 **FIDUCIARY DUTY**

10 61. Plaintiff repeats and realleges each of the allegations in the foregoing
11 paragraphs as if fully set forth in this Count One.

12 62. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that plan
13 fiduciaries discharge their duties to the plan solely in the interests of plan
14 participants and beneficiaries and with the care, skill, prudence, and diligence under
15 the circumstances that a prudent person acting in a like capacity and familiar with
16 such matters would use in the conduct of a similar enterprise.

17 63. The Safeway Defendants breached the duty of prudence in connection
18 with selecting the JPM Smartretire Passiveblend Funds as investment options
19 because, among other things, these funds charged higher fees than comparable
20 funds, had no meaningful record of performance so as to indicate that higher
21 performance would offset this difference in fees, and was managed by a company
22 affiliated with the Plan’s recordkeeper, JPMRPS, and trustee, Chase.

23 64. The duty of prudence also requires that plan fiduciaries investigate
24 whether revenue sharing is a reasonable and cost-effective way to pay for
25 administrative services incurred in connection with a plan, such as record-keeping
26 services.

27 65. The Safeway Defendants breached the duty of prudence in connection
28 with agreeing to the revenue sharing arrangement for the JPM Smartretire

1 Passiveblend Funds because that arrangement resulted in excessive fees for record-
2 keeping services as compared to a per-participant fee for such services.

3 66. This breach of duty became even more pronounced as the amounts
4 invested in the JPM Smartretire Passiveblend Funds, and thus the revenue paid out
5 to JPMRPS / Great-West, more than doubled between 2011 and 2014, while the
6 total number of active participants in the plans investing in these funds decreased.
7 The Safeway Defendants took no action to reduce the asset-based charge under the
8 revenue sharing arrangement to account for the ever-increasing amounts held in the
9 JPM Smartretire Passiveblend Funds.

10 67. The Safeway Defendants' breaches caused Plaintiff and the members of
11 the Class to pay excessive and/or improper fees, thus reducing their investment
12 returns.

13 68. Under ERISA § 409, 29 U.S.C. § 1109, and 502(a), the Safeway
14 Defendants are liable to make good to Plaintiff, the Class, and the Plan the losses
15 they experienced because of the Safeway Defendants' breaches of fiduciary duty.
16 And under ERISA § 502(a)(1) & (2), 29 U.S.C. § 1132(a)(1) & (2), Plaintiff as a
17 participant in the Plan may bring a civil action to establish this liability.

18 69. Further, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court
19 may also award equitable relief to Plaintiff, the Class, and the Plan to prevent the
20 continuation of the Safeway Defendants' breaches of their fiduciary duties.

21 **COUNT II – DEFENDANTS' PROHIBITED TRANSACTIONS**

22 70. JPMRPS / Great-West was and is a "party in interest" with respect to
23 the Plan pursuant to ERISA § 3(14)(B), 29 U.S.C. § 3(14)(B), as a "person
24 providing services to such plan."

25 71. ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), prohibits a plan
26 fiduciary from causing the plan to engage in a transaction that constitutes any
27 furnishing of goods, services, or facilities between the plan and a party in interest to
28 that plan.

1 72. The revenue sharing arrangement set forth above constitutes a
2 transaction prohibited by this section, as it involves among other things the
3 exchange of services by JPMRPS / Great-West to the Plan.

4 73. ERISA § 408(b)(2), 29 U.S.C. § 1008(b)(2), provides for certain
5 exemptions to the prohibition on the specified transactions. The revenue sharing
6 arrangement described above does not qualify for any exemption under ERISA
7 § 408(b)(2), 29 U.S.C. § 1008(b)(2), because JPMRPS / Great-West received more
8 than reasonable compensation for the record-keeping services they provided.

9 74. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court may
10 award equitable relief to Plaintiff, the Class, and the Plan against the Safeway
11 Defendants and Great-West to remedy and prevent the continuation of the
12 transactions prohibited by ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment as follows:

15 A. A determination that this action may be maintained as a class action
16 under Federal Rule of Civil Procedure 23, and that Plaintiff shall serve as class
17 representative;

18 B. A Declaration that the Safeway Defendants and each of them breached
19 ERISA fiduciary duties owed to the Plaintiff, the Class, and the Plan;

20 C. An Order compelling the Safeway Defendants to reimburse Plaintiffs
21 and members of the Class for all losses resulting from their breaches of fiduciary
22 duty;

23 D. An Order awarding damages to Plaintiffs and members of the Class,
24 with interest as provided by law;

25 E. An Order enjoining the Safeway Defendants from any further
26 violations of their ERISA fiduciary obligations;

1 F. A Declaration that the Safeway Defendants and JPMRPS / Great-West
2 and each of them engaged in transactions prohibited by ERISA not subject to any
3 exemption;

4 G. An Order compelling the Safeway Defendants and Great-West to
5 reimburse Plaintiff, the members of the Class, and the Plan for any compensation
6 received by JPMRPS / Great-West as a result of transactions prohibited by ERISA;

7 H. An Order enjoining the Safeway Defendants and Great-West from
8 continuing to engage in transactions prohibited by ERISA;

9 I. An Order awarding costs under 29 U.S.C. § 1132(g);

10 J. An Order awarding attorneys' fees under 29 U.S.C. § 1132(g) or as
11 provided by law;

12 K. An Order for other appropriate equitable relief against Defendants; and

13 L. Such other and further relief as the Court may deem just and proper.
14

15 Dated: August 25, 2016

Respectfully submitted,

16
17 /s/ Kyle G. Bates

18
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